

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19654 of 523 8th Street LLC**, as amended<sup>1</sup>, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the rear yard setback requirements of Subtitle G § 705.3, to construct a rear, first floor addition, and add a new third floor to an existing two-story restaurant in the MU-25 at premises 523 8th Street S.E. (Square 903, Lot 841).

**HEARING DATE:** January 17, 2018  
**DECISION DATE:** January 17, 2018

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 (original) and 36 (revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6B<sup>2</sup> and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a timely report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on January 9,

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<sup>1</sup> The original request also included variances for lot occupancy (Subtitle G § 704.1) and nonconforming structure (Subtitle C § 202.2). (See, Exhibit 5.) At the public hearing, the Applicant's agent agreed with the Office of Planning's assessment that only rear yard variance relief is required and the application was amended to that effect. The Board requested an amended self-certification to show the amended relief. (Exhibit 36.) The caption has been changed accordingly.

<sup>2</sup> Notice was incorrectly sent to ANC 6A; however, ANC 6B -- the ANC in which the property is located -- did receive notice, having reviewed the application and submitted a report. (See, Exhibit 34.)

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2018, at which a quorum was present, the ANC voted 7-0-0 to support the application.<sup>3</sup> (Exhibit 34.)

The Office of Planning (“OP”) submitted a timely report recommending approval of the application. In its report, OP noted that only rear yard relief was required and that lot occupancy relief was not needed because the restriction under Subtitle G § 705.3 only applies to residential, not commercial, uses. (Exhibit 25.) The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 26.)

Letters of support for the application from the owner of 525 8<sup>th</sup> Street, S.E. and from the Capitol Hill Restoration Society were submitted to the record. (Exhibits 28 and 32.)

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for an area variance from the rear yard setback requirements of Subtitle G § 705.3, to construct a rear, first floor addition, and add a new third floor to an existing two-story restaurant in the MU-25. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle G § 705.3, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 30.**

**VOTE:**           **4-0-1** (Carlton E. Hart, Frederick L. Hill, Lesylleé M. White, and Anthony J. Hood to APPROVE; one Board seat vacant.)

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<sup>3</sup> The ANC report noted that it had previously voted to oppose the Applicant’s Historic Preservation request, but as the Applicant worked with the ANC and residents to resolve a point of contention that is reflected in the approved revised plans which show an interior trash room with an access door directly from the interior of the building as well as a roll up door access from the exterior, the ANC submitted a report in support of the application, based on those revised plans. (Exhibit 34.)

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**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**ATTESTED BY:**

  
SARA E. PARDIN  
Director, Office of Zoning

**FINAL DATE OF ORDER:** May 1, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION,

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HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.